

1 NICHOLAS A. TRUTANICH
2 United States Attorney
3 District of Nevada
4 Nevada State Bar No. 13644
5 DANIEL D. HOLLINGSWORTH
6 Assistant United States Attorney
7 Nevada State Bar No. 1925
8 501 Las Vegas Boulevard South, Suite 1100
9 Las Vegas, Nevada 89101
10 (702) 388-6336
11 Daniel.Hollingsworth@usdoj.gov
12 Attorneys for the United States

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,
Plaintiff,
v.
PATTI KERN,
Defendant.

2:19-CR-032-RFB-VCF

**United States of America's Unopposed
Amended Motion for an Interlocutory
Order of Sale of the 2015 Ford F250 Truck
and 2004 Sundowner LQ Horse Trailer,
and Order**

The United States moves this Court to issue an Order for an Interlocutory Sale of the 2015 Ford F250 Truck held in the name of Patti Kern, VIN 1FT7W2BT5FED16800 (2015 Ford F250) and the 2004 Sundowner LQ Horse Trailer held in the name of Patti Kern, VIN 12SLE322141KA4098 (2004 Trailer) (constituting property) listed in the Plea Agreement (ECF No. 10) and Preliminary Order of Forfeiture (ECF No. 11), authorizing the United States Marshals Service (USMS) to sell the property through one of its approved methods.

The grounds for granting the Order for an Interlocutory Sale of the 2015 Ford F250 and the 2004 Trailer are as follows. First, the 2015 Ford F250 and the 2004 Trailer continue to deteriorate pending the sentencing of Patti Kern (Kern). Second, the value of the 2015 Ford F250 and the 2004 Trailer continue to depreciate. Third, the storage costs and other maintenance costs of the 2015 Ford F250 and the 2004 Trailer will continue to accrue against its value. Fourth, the sooner the 2015 Ford F250 and the 2004 Trailer are sold, the

///

1 more net sale proceeds will exist. Fifth, this Court is authorized to approve interlocutory
2 sales.

3 This Motion is made and is based on the papers and pleadings on file herein, and the
4 attached Memorandum of Points and Authorities.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. STATEMENT OF THE CASE**

7 **A. Procedural History**

8 On March 14, 2019, Kern plead guilty (ECF Nos. 6, 7, 8, 9, 14) by plea agreement
9 (PA, ECF No. 10) to a One Count Criminal Information (ECF No. 8), charging her with
10 conspiracy to commit mail fraud in violation of 18 U.S.C. §§ 1341 and 1349 and alleging
11 forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) with 28 U.S.C. § 2461(c) and 21 U.S.C. §
12 853(p) because the property was fraudulently obtained illegal proceeds. This Court entered a
13 Preliminary Order of Forfeiture (ECF No. 11) forfeiting personal property and substituting
14 and forfeiting the 2015 Ford F250 and the 2004 Trailer and an additional \$400,000. The
15 sentencing has been continued and is scheduled currently for June 4, 2020.

16 **B. Statement of Facts**

17 From no later than May 2011 until February 2018, within the District of Nevada and
18 elsewhere, Kern, together with others, engaged in a direct-mail scheme that sent fraudulent
19 prize promotion mailings to thousands of consumers across the United States. The mailings
20 induced victims to pay a fee in exchange for a falsely promised large cash prize. The object
21 and purpose of the scheme was to obtain money from the victims by means of false and
22 fraudulent statements and material concealments of fact in the mailings. None of the victims
23 who sent a fee to Kern and her co-conspirators in response to a fraudulent prize promotion
24 mailing from the direct-mail scheme ever received a large cash prize (PA, ECF No. 10, p. 4-
25 5).

26 In devising and carrying out the direct-mail scheme, Kern knowingly conspired with
27 others to commit the crime of mail fraud as that crime is defined in 18 U.S.C. § 1341. The
28 purpose of the conspiracy was to obtain money from victims, many of whom were elderly

1 and vulnerable, by means of materially false representations. In planning and executing the
2 scheme, Kern acted with intent to defraud her victims (PA, ECF No. 10, p. 5).

3 To execute the fraudulent scheme, Kern and her co-conspirators caused fraudulent
4 prize promotions to be delivered to victims by U.S. mail. The mailings misled victims to
5 believe that they would receive large sums of money, ranging from hundreds of thousands
6 to several million dollars, if they paid a relatively small fee. This statement was false.
7 Victims did not receive large sums of money (PA, ECF No. 10, p. 5, Presentence
8 Investigation Report, p. 6, ¶ 12 and p. 9, ¶ 29). The mailings were made to appear as if they
9 came from sophisticated companies and often were signed by a person with an official title,
10 such as “Director of Disbursements,” “President,” or “Comptroller.” In fact, none of these
11 people actually existed. The mailings directed victims to pay a delivery fee, generally \$20 or
12 \$25 (PA, ECF No. 10, p. 5).

13 The defendant admits that her conduct caused in excess of \$8 million in losses to the
14 victims of her direct-mail scheme (PA, ECF No. 10, p. 5).

15 **C. USPIS took possession of the 2015 Ford F250 and the 2004 Trailer.**

16 This Court entered the Preliminary Order of Forfeiture (ECF No. 11, p. 3-4),
17 ordering the United States to seize and to take possession of the 2015 Ford F250 and the
18 2004 Trailer. USPIS did so on June 3, 2019.

19 **D. The 2015 Ford F250 and the 2004 Trailer continue to depreciate in value and
20 the storage costs continue to increase pending the sentencing of Kern.**

21 The United States Postal Investigation Service (USPIS) seized the properties on June
22 3, 2019, and they were in USPIS custody until November 1, 2019. The properties have
23 been in the custody of USMS custody since November 1, 2019. At the time of seizure, the
24 2015 Ford F250 value was \$40,050.00. As of November 11, 2019, the value of the 2015
25 Ford F250 is \$33,650.00. As of November 30, 2019, the storage costs of the 2015 Ford F250
26 total \$423.25, and continue to accrue \$9.00 each day. At the time of seizure, the 2004
27 Trailer value was \$5,120.00. As of November 11, 2019, the value of the 2004 Trailer is
28

///

1 \$4,200.00. As of November 30, 2019, the storage costs of the 2004 Trailer total \$710.00, and
2 continue to accrue \$8.00 each day.

3 While each property is in storage, the expenses continue to accrue against each
4 property's value pending Kern's sentencing and appeal, if any, and each property continues
5 to depreciate in value.

6 **II. ARGUMENT**

7 This Court has authority to issue an Interlocutory Order of Sale. "At any time before
8 entry of a final forfeiture order, the court, in accordance with Supplemental Rule G(7) of the
9 Federal Rules of Civil Procedure, may order the interlocutory sale of property alleged to be
10 forfeitable." Fed. R. Crim. P. 32.2(b)(7).

11 On motion by a party or a person having custody of the property, the court may order
12 all or part of the property sold if: (A) the property is perishable or at risk of
13 deterioration, decay, or injury by being detained in custody pending the action; (B) the
14 expense of keeping the property is excessive or is disproportionate to its fair market
15 value; (C) the property is subject to a mortgage or to taxes on which the owner is in
16 default; or (D) the court finds other good cause.

17 Supplemental Rule G(7)(b) of the Supplemental Rules for Admiralty or Maritime Claims
18 and Asset Forfeiture Actions of the Federal Rules of Civil Procedure (paragraphs omitted).
19 Only one of the grounds for interlocutory sale is required since Supplemental Rule G(7)(b)
20 is disjunctive. *See Shelter Cove Marina, Ltd. v. M/Y ISABELLA*, No. 3:17-cv-01578-GPC-
21 BLM, 2017 WL 5906673, 2 (S.D. Cal. Nov. 30, 2017) (explaining that another
22 Supplemental Rule for interlocutory sale with similar language is disjunctive); *Cal. Yacht
Marina-Chula Vista, LLC v. S/V OPILY*, No. 14-cv-1215-BAS-BGS, 2015 WL 1197540, 2
(S.D. Cal. Mar. 16, 2015) (same).

23 Three of the four reasons for the interlocutory sale apply in this case regarding the
24 property: the property will deteriorate while the criminal prosecution and forfeiture
25 processes are completed; the storage costs continue to increase; and other good cause, the
26 value of the vehicle depreciates over time, and the sooner the vehicle is sold, more net sale
27 proceeds will exist. Supplemental Rule G(7)(b); Fed. R. Crim. P. 32.2(b)(7); see *United States
v. One Parcel of Real Prop. Described as Lot 41, Berryhill Farm Estates*, 128 F.3d 1386, 1389–90

1 (10th Cir.1997) (explaining the district court orders an interlocutory sale when the property
2 is deteriorating and decaying).

3 “A sale must be made by a United States agency that has authority to sell the
4 property, by the agency’s contractor, or by any person the court designates.” Supplemental
5 Rule G(7)(b)(ii). In this case, the USMS will sell the property as “governed by 28 U.S.C. §§
6 2001, 2002, and 2004, unless all parties, with the court’s approval, agree to the sale, aspects
7 of the sale, or different procedures.” Supplemental Rule G(7)(b)(iii).

8 Without the Interlocutory order of sale, the property cannot be sold until the court
9 enters the Final Order of Forfeiture. Fed. R. Crim. P. 32.2(b)(4) and 21 U.S.C. § 853(h). If
10 the government waits for the Final Order of Forfeiture, the value of the vehicle will
11 depreciate even further and the storage costs and maintenance costs will continue to accrue.

12 In *United States v. Guzman*, No. 3:08-CR-23-2, 2013 WL 12228400 (M.D. Tenn. Oct.
13 7, 2013), the district court found and held:

14 The Government has presented evidence suggesting that the value of the [property]
15 continues to decrease with time and, as of last month, was approximately \$16,500.00
16 less than the amount the Government had paid for storage and maintenance up to that
17 point. Thus, the Court finds that the expense of keeping the [property] is both
excessive and disproportionate to its fair market value. Given the apparent continued
depreciation in value and rising cost of maintaining the [property], the Court finds an
interlocutory sale is the best way to preserve its remaining value.

18 *Id.* at 2 (brackets added); *United States v. Haley*, No. 11-CR-0540-WDQ, 2011 WL
19 6202787, 1 (D. Md. Dec. 8, 2011) (explaining “that the Government’s desire to avoid
20 storage costs (particularly with respect to the twenty-two automobiles and the tractor
21 trailers) and the risk of depreciation in value (particularly of the computers and other
22 electronic items) constitute “good cause” for the interlocutory sale of the personal property
23 ...[,]” and the real property to avoid liability for accidents and to “avoid falling in arrears
24 on the payment of applicable property taxes.”).

25 In this case, the value of the 2015 Ford F250 and 2004 Trailer will continue to
26 depreciate and the maintenance and storage costs will continue to rise and dilute the
27 equity.

28 ///

“The sale proceeds are substitute res subject to forfeiture in place of the property that was sold[, and] the United States must maintain them in an interest-bearing account.” Supplemental Rule G(7)(b)(iv); *United States v. King*, No. 10 CR. 122 (JGK), 2010 WL 4739791, 4 (S.D.N.Y. Nov. 12, 2010).

Kern agreed on January 3, 2020, through her counsel, William Terry, to the interlocutory sale of the property. The United States requests the Court allow Kern and the government to sell the property to a third party through the USMS.

III. CONCLUSION

Based on the foregoing reasons, the Court should order the interlocutory sale of the 2015 Ford F250 Truck held in the name of Patti Kern, VIN 1FT7W2BT5FED16800 and the 2004 Sundowner LQ Horse Trailer held in the mane of Patti Kern, VIN 12SLE322141KA4098.

Dated: January 3, 2020.

Respectfully submitted,

NICHOLAS A. TRUTANICH
United States Attorney

/s/ Daniel D. Hollingsworth
DANIEL D. HOLLINGSWORTH
Assistant United States Attorney

IT IS SO ORDERED.

8

HONORABLE RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE

DATED: February 10, 2020

CERTIFICATE OF SERVICE

A copy of the foregoing was served upon counsel of record via Electronic Filing on January 3, 2020.

/s/ Heidi L. Skillin
HEIDI L. SKILLIN
FSA Contractor Paralegal